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Excerpt
THE MOST FREQUENTLY ASKED QUESTIONS ON THE EDUCATION RIGHTS OF
CHILDREN AND YOUTH IN HOMELESS SITUATIONS
(updated 11/09)

This document provides answers to frequently asked questions on the McKinney-Vento Homeless Assistance Act and the education rights of children and youth in homeless situations. The answers are general responses based on federal statutes, regulations, and guidance; relevant case law; and best practices from across the country. While NAEHCY and NLCHP compiled the answers, they include contributions from the National Center for Homeless Education and attorneys and educators who are experts in homeless education.

It cannot be emphasized enough that these are general responses, and that answers could change based on the facts of a particular case. McKinney-Vento issues require a case-specific inquiry. This document is meant to provide basic information and tools to assist parents, youth, educators and advocates in understanding the McKinney-Vento Act.

In this document, the term “school district” is used to mean local educational agencies. The term “McKinney-Vento Act” refers only to Subtitle VII-B of the Act, the Education for Homeless Children and Youths program (42 U.S.C. §§11431-11435). The McKinney-Vento Act is a federal law that supersedes conflicting state laws or local policies.

Issues Facing Youth

66. How does the McKinney-Vento Act define “unaccompanied youth”? Is there an age range?

A: Unaccompanied youth is defined as a youth not in the physical custody of a parent or guardian. 42 U.S.C. §11434A(6). The Act does not provide an age range.

67. Is there an age limit on serving secondary students?

A: The McKinney-Vento Act applies to children and youth age 21 and under, consistent with their eligibility for public education services under state and federal law. 2004 Guidance, A-3. State laws vary, but generally provide access to all students until high school graduation or equivalent, or until age 18 (or older in some states). For special education students, federal law provides the right to access services until age 22. 20 U.S.C. §1412(a)(1)(A). (SDCL 13-13-10.4 and SDCL 13-28-6 - age 21 in South Dakota)

68. Must schools enroll youth in school without proof of guardianship?

A: Yes. Lack of a legal guardian or guardianship documents cannot delay or prevent the enrollment of an unaccompanied youth. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii). States and school districts have established different procedures for enrolling youth. Some permit the youth to enroll himself or herself; some have the McKinney-Vento liaison handle enrollment; others use caregiver forms to allow adult caregivers to enroll youth. The McKinney-Vento Act requires states and school districts to eliminate barriers to enrollment and retention and to enroll unaccompanied youth in school immediately. 42 U.S.C. §§11432(g)(1)(I), (g)(7). School districts may adopt their own policies to meet these mandates. More information about approaches to enroll unaccompanied youth immediately is available at <http://www.serve.org/nche/downloads/briefs/youth.pdf>.

69. Can a school require a caregiver to get legal guardianship to enroll a student in school?

A: No. The McKinney-Vento Act requires states to address enrollment barriers related to lack of guardianship in school enrollment and requires school districts to enroll youth in school immediately, even if they lack a legal guardian or typically required enrollment documents. 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii). The decision to seek legal guardianship is a serious decision that significantly affects the legal rights of the parent and caregiver well beyond the school arena. While that step will be appropriate in some cases, it will not be in others.

70. Who can make educational decisions for an unaccompanied youth?

A: States and school districts have established different procedures for educational decision-making. Some permit the youth to make educational decisions on his/her own behalf; some vest the liaison with that authority; others allow adult caregivers to make such decisions. FERPA allows “an individual acting as a parent in the absence of a parent or a guardian” to access a student’s education records, thereby permitting schools to discuss educational issues with such caregivers. 34 CFR §§99.3-99.4. The McKinney-Vento Act requires states and school districts to eliminate barriers to enrollment and retention and to enroll unaccompanied youth in school immediately. 42 U.S.C. §§11432(g)(1)(I), (g)(7). School districts may adopt their own policies to meet these mandates. It should be noted that the Individuals with Disabilities Education Act (IDEA) has its own rules and procedures for appointing a “surrogate parent” to make special education decisions for minors, where a parent or legal guardian is not available

71. Do schools have to contact the police when enrolling unaccompanied youth?

A: Generally, no. Very few states require schools to report runaway youth. State law determines the obligation of a McKinney-Vento liaison, school staff, or service provider to contact child protective services or law enforcement if they suspect abuse. Regardless of such obligations, the McKinney-Vento Act requires schools to enroll unaccompanied youth in school immediately. 42 U.S.C. §11432(g)(3)(C). Further, contacting the police when enrolling youth is likely to violate the Act’s requirement that school districts and states eliminate barriers to enrollment and retention in school. 42 U.S.C. §§11432(g)(1)(I), (g)(7). U.S. Department of Education Guidance elaborates that “the McKinney-Vento statute provides a broad mandate to

States and districts to change policies or practices that act as a barrier to the enrollment, attendance, and school success of homeless children.” 2004 Guidance, G-7. Based on these requirements, schools should exercise care and concern when contacting social services or law enforcement agencies. Youth are unlikely to enroll in or attend school if they fear being taken into custody simply because they are unaccompanied. While educators are required to report reasonable suspicions of child abuse, in many cases unaccompanied youth are in the care of an adult or otherwise out of immediate danger, and there is no reason to suspect abuse. It is likely that state mandatory reporting laws would not require contacting police in such cases. A state-by-state guide to mandatory reporting laws is available from the Child Welfare Information Gateway, at http://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf. If school personnel have a reasonable suspicion of child abuse, liaisons should work with police and child protective services to keep the youth in school and to serve the student's best interest. Where state law provides a choice, as most do, schools should contact child protective services rather than the police. Child protective services agencies should have the training and facilities to respond more appropriately to such reports.

72. What if an unaccompanied youth gets injured in school? How will the child receive medical care without a parent? Will the school be liable?

A: If an unaccompanied youth has a medical emergency, the school can contact the local emergency room. Medical professionals should be familiar with the rules to treat minors and will respond appropriately to medical emergencies. Liability for injuries is based on a party's failure to exercise reasonable care. By exercising reasonable care in creating a safe environment and responding appropriately to medical emergencies, the school can help protect itself from liability. In any event, such concerns do not relieve the school of its responsibilities under the McKinney-Vento Act. Indeed, if a school violates the Act by refusing to enroll an unaccompanied youth in school, and the youth is subsequently injured off school grounds, a parent or guardian could have a cause of action to sue the school for having turned the youth away. As state laws vary regarding the rights of minors to receive medical care without a parent or guardian, McKinney-Vento liaisons and other advocates may wish to contact the Center on Adolescent Health and the Law (<http://www.cahl.org/>) or state/local resources for more information. A legal memorandum on unaccompanied youth's access to medical care is available at <http://www.naehcy.org/memos.html>.

73. If runaway youth would just follow their parents' rules, they could live at home; why should we encourage their bad behavior?

A: Most runaway youth, especially those who are on the streets a significant length of time, have fled from abusive homes for their own survival. Some leave home without a parent's permission; others are forced out of their homes by their parents or guardians. Studies of unaccompanied youth have found that 20 to 50 percent were sexually abused in their homes, while 40 to 60 percent were physically abused. Severe dysfunction in the home is also common. Forty percent of callers to the National Runaway Switchboard identified negative family dynamics as the leading reason for leaving home. For example, over two-thirds of unaccompanied youth surveyed in a recent study reported that at least one parent abused drugs or alcohol. Many young people are not welcome in their parents' or guardians' homes

due to their sexual orientation or identity, pregnancy, or other types of family conflict. For example, 20 to 40% of homeless youth in one study identified themselves as gay, lesbian, bisexual and/or transgender, compared to only 3-5% of the overall population, and 10% of currently homeless female teenagers are pregnant. Youth often leave home to remove themselves from an immediately painful situation, but without plans for what to do next. In a recent survey of unaccompanied homeless youth in California, over half felt that being homeless was as safe as or safer than being at home. 5,000 runaway youth die every year from assaults, illness, or suicide. Yet many runaway youth continue to value education and the opportunities, safety, and stability it provides. Excluding these youth from school will harm them and society. (See original complete document on website for citations)

74. Can unaccompanied youth enroll in Job Corps without parental approval?

A: With advocacy, yes. Job Corps is a comprehensive residential, education and job training program for at-risk youth, ages 16 through 24. It provides academic, vocational, and social skills training to nearly 70,000 students a year, at 118 different sites. Youth who are homeless are eligible for Job Corps. Although the Job Corps law does not require a parent's or guardian's signature for a youth to participate, federal Job Corps policy does. However, Job Corps programs can waive that requirement for youth who have no parent or guardian, cannot find a parent or guardian, or are legally emancipated. The requirement can also be waived for youth whose parents are not willing to sign, as long as they do not object to the youth participating. McKinney-Vento liaisons have used this exception to advocate successfully for unaccompanied youth to participate in Job Corps without a parent's signature. The Job Corps Policy Requirements Handbook is available at http://www.jobcorps.gov/AboutJobCorps/program_admin.aspx (see page 11 of Exhibit 1-1). 20 C.F.R. §664.200; 29 U.S.C. §2884(3)(C); Job Corps Policy Requirements Handbook; 29 U.S.C. §2801(25).

75. How can the Runaway and Homeless Youth Act help unaccompanied youth?

A: The Runaway and Homeless Youth Act can help youth in many ways. First, it contains a Basic Center Program that supports emergency shelters for up to 15 days for unaccompanied youth under 18 years old. Second, the law supports Transitional Living Programs for youth, which provide long-term housing for up to 18 months and life skills for youth 16-21 years old. Third, the law contains a Street Outreach Program to provide outreach and services to youth on the streets. Lastly, the law funds the National Runaway Switchboard, trainings for youth workers, and other information and supports. Runaway and Homeless Youth Act programs are required to provide youth with information about the McKinney-Vento Act and to collaborate with their McKinney-Vento liaisons. More information about this program is available at <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/index.htm>. 42 U.S.C. §§5701 et seq.; 42 U.S.C. §5712(b)(3); 45 C.F.R. §1351.18(e). (Grantees in South Dakota – Oglala Sioux Tribe-Pine Ridge, Volunteers Of America in various locations, and Lutheran Social Services)